

1 Hon. Richard A. Jones
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSEPHINA HERNANDEZ
14 GARETE, a/k/a Marina Flores,

15 Defendant.

16 No. CR12-163RAJ

17 ORDER DENYING MOTION FOR
18 REDUCTION OF SENTENCE

19 **I. INTRODUCTION**

20 This matter comes before the court on Defendant Josephina Hernandez Garete's
21 *pro se* motion requesting a reduction in her sentence under 18 U.S.C. § 3582(c)(2),
22 based on Amendments 782 and 788 to the United States Sentencing Guidelines
23 ("USSG") (Dkt. #51). Plaintiff United States of America opposes the motion
24 (Dkt. #54). The court has thoroughly considered the parties' briefing, the relevant
25 record, and the applicable law. Being fully advised,¹ the court DENIES Ms.
26 Hernandez Garete's motion for the reasons stated below.

27 **II. BACKGROUND**

28 Defendant Josephina Hernandez Garete was sentenced by this court on
29 March 26, 2013, following her plea of guilty to one count of distribution of
30 methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and one

31

¹ No party has requested it, and the court finds oral argument to be unnecessary.

1 count of money laundering, in violation of 18 U.S.C. § 1956(a)(3)(B). The
2 Indictment charged and Defendant acknowledged in her Plea Agreement that the
3 offense involved 111.3 grams of actual methamphetamine. At the time Defendant
4 was sentenced, based on this quantity of drugs, Defendant's total offense level was
5 31, her criminal history category was I, and her applicable sentencing guideline
6 range was 108 to 135 months. However, pursuant to 21 U.S.C. § 841(b)(1)(A),
7 Defendant was subject to a mandatory minimum sentence of ten years (120 months).
8 (See Plea Agreement, Dkt. #25 at 2.) Thus, Defendant's actual sentencing range was
9 120 to 135 months.

III. DISCUSSION

A. Legal Standard

11 Amendment 782 to the United States Sentencing Guidelines, which became
12 effective November 1, 2014, lowered the penalties for most drug offenses by
13 reducing most base offense levels contained in the USSG § 2D1.1 Drug Quantity
14 Table by two levels, and making other related adjustments to this Guideline. Along
15 with Amendment 782, the Sentencing Commission adopted Amendment 788, which
16 decreed that Amendment 782 may be applied retroactively to lower the sentences of
17 previously sentenced inmates. At issue in the instant motion is whether this court has
18 authority to reduce Defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).

19 In order to qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2), two
20 conditions must be met: (1) the Defendant must have been sentenced to a term of
21 imprisonment based on a sentencing range that has been lowered by a retroactively
22 applicable Guidelines amendment; and (2) the sentence reduction sought must be
23 consistent with the Sentencing Commission's applicable policy statements. *United*
24 *States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam). A district court
25 does not have jurisdiction to reduce the Defendant's sentence unless both criteria are
26 met. See *United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009).

1 **B. Defendant's Motion**

2 Defendant's sentence was a mandatory minimum sentence rather than a
3 sentence based on any section of the Sentencing Guidelines that subsequently has
4 been amended. Sentence reductions are not available to defendants who have been
5 sentenced to the applicable mandatory minimum sentence. As the Ninth Circuit has
6 stated, “[i]t is axiomatic that a statutory minimum sentence is mandatory.” *United*
7 *States v. Sykes*, 658 F.3d 1140, 1146 (9th Cir. 2011). Section 5G1.1(c)(2) of the
8 Guidelines states that a sentence “may be imposed at any point within the applicable
9 guideline range, provided that the sentence is not less than any statutorily required
10 minimum sentence.” USSG §5G1.1(c)(2). Thus, when a defendant is subject to a
11 mandatory minimum sentence, the sentence is never “based on a sentencing range
12 that has subsequently been lowered by the Sentencing Commission.” *United States*
13 *v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009). Therefore, the Defendant does not
14 qualify for a sentence reduction.

14 **IV. CONCLUSION**

15 For the above reasons, Defendant Josephina Hernandez Garete’s *pro se* Motion
16 to Reduce Sentence (Dkt. #51) is DENIED.

17 DATED this 8th day of June, 2015.

18 
19 The Honorable Richard A. Jones
20 United States District Judge